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Teh Kim Hong & Ors v Public Prosecutor and other appeals

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NOS J-05–60 OF 2011, J-05–61 OF 2011, J-05–117 OF 2011 AND J-05(S)-101 OF 2011
APANDI ALI, LINTON ALBERT AND HAMID SULTAN JJCA
4 FEBRUARY 2014

Criminal Law — Kidnapping Act 1961 — s 3(1) — Whether case proven beyond reasonable doubt — Marked ransom money recovered from appellant's car and person — Whether circumstantial evidence pointing unerringly to guilt of appellant — Appellant giving information leading to discovery of burnt body of deceased and bag containing ransom money — Whether common intention proven

Criminal Law — Penal Code — s 302 — Murder — Whether case proven beyond reasonable doubt — Deceased last seen alive with appellants — Whether circumstantial evidence pointing unerringly to guilt of appellant — Appellant giving information leading to discovery of burnt body of deceased and bag containing ransom money — Whether common intention proven

Evidence — Information leading to fact discovered — Admissibility of statement — Kidnap and murder — Whether information lead to discovery of burnt body of deceased and bag containing ransom money admissible — Evidence Act 1950 s 27

The deceased (one Lai Yin Xin) disappeared after she left her workplace on 11 September 2008. She was last seen approaching and boarding a silver Perodua Kembara. On 12 September 2008 her mother (SP13) received a phone call demanding a ransom for her release. The ransom money was delivered as instructed. However, on the 16 September 2008 the deceased's body was found, totally burnt. The appellants were arrested on 15 September 2008 in a Kembara car. Cash totaling RM22,000 was found in the car. The appellants were jointly charged for murder under s 302 of the Penal Code and for kidnapping, under s 3 of the Kidnapping Act 1961. After hearing the defence the learned trial judge found all of the appellants guilty on both charges. The first appellant was sentenced to death for both offences, while the second and third appellants, due to their young age at the time of the commission of the offences were ordered to be detained at the Ruler's Pleasure under the provision of s 97(2)(b) of the Child Act 2001. The appellants appealed against their convictions and sentences on the grounds that: (i) the recovery of the ransom

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money from the car was not sufficient circumstantial evidence to link the first appellant with the murder and the kidnapping; and (ii) the trial judge had failed to discuss the element of common intention sufficiently.

Held, dismissing the appeals and affirming the convictions and sentences:

(1) Based on the circumstantial evidence it was clear that the chain of evidence was so complete as to point unerringly to the guilt of the appellants. The ransom money recovered from the car and on the person of the third appellant were actually marked notes. All the money recovered tallied with the serial numbers noted (see para 18).

(2) It was not correct to say that the judge did not deal with the element of common intention. The learned judge had detailed in a meticulous manner as to the roles played by the three appellants in the commission of both offences of murder and kidnapping (see para 20)

(3) All the three appellants did give information leading to various discoveries, under s 27 of the Evidence Act 1950. The first appellant gave information to the police leading to the discovery of the burnt body of the deceased in some bushes at Kawasan Perindustrian Fasa 3, Taman Puteri Kulai. The second appellant gave information to the police leading to the discovery of the shop where all the appellants sold the handphone belonging to the deceased. The third appellant gave information to the police, leading to the discovery of the original bag containing the ransom money. Viewed collectively, all of the evidence were clear manifestation of acts in concert by the appellants and thus could reasonably be deemed to have acted with common intention, for both offences (see paras 21–22).

(4) The cause of death of the deceased was 'manual strangulation', and it was not challenged that the deceased was already dead before her body was burnt. From such act, it could reasonably be inferred that the burning of the body was an act to destroy evidence (see para 24).

(5) It is also unchallenged evidence that the deceased was last seen alive when she was getting into the car, identified as a silver coloured Kembara, the very vehicle in which the three appellants were in when they were apprehended (see para 24).

[Bahasa Malaysia summary

Si mati (seorang Lai Yin Xin) telah hilang selepas dia meninggalkan tempat kerjanya pada 11 september 2008. Dia dilihat kali terakhir menghampiri dan menaiki sebuah Proton Kembara berwarna perak. Pada 12 September 2008 ibunya ('SP13') menerima panggilan telefon menuntut tebusan untuk pelepasannya. Wang tebusan telah dihantar seperti yang diarahkan. Tetapi pada 16 September 2008 mayat si mati ditemui, terbakar sepenuhnya. Perayu-perayu ditangkap pada 15 September 2008 di dalam kereta Kembara.

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Wang tunai berjumlah RM22,000 telah dijumpai di dalam kereta. Perayu-perayu telah didakwa bersama untuk membunuh di bawah s 302 Kanun Keseksaan dan menculik, di bawah s 3 Akta Culik 1961. Setelah mendengar pembelaan Yang Arif hakim bicara mendapati kesemua perayu bersalah atas kedua-dua dakwaan. Perayu pertama dihukum mati untuk kedua-dua dakwaan, manakala perayu kedua dan ketiga disebabkan faktor umur muda mereka sewaktu jenayah itu diperintahkan untuk ditahan pada selama mana yang diperkenankan oleh Raja di bawah proviso s 97(2)(b) Akta Kanak-Kanak 2001. Perayu-perayu merayu terhadap sabitan dan hukuman terhadap mereka atas alasan bahawa: (i) penemuan wang tebusan dari kereta bukanlah keterangan mengikut keadaan yang mencukupi untuk mengaitkan perayu pertama dengan pembunuhan dan penculikan; dan (ii) hakim bicara gagal untuk membincangkan elemen niat bersama secukupnya.

Diputuskan, menolak rayuan dan membenarkan sabitan dan hukuman:

(1) Berdasarkan keterangan ikut keadaan adalah jelas bahawa rantai keterangan adalah begitu lengkap untuk menunjukkan dengan tepat kebersalahan perayu-perayu. Wang tebusan yang ditemui di dalam kereta dan pada perayu ketiga adalah wang yang ditandakan. Kesemua wang yang didapati semula adalah selaras dengan nombor siri tercatat (lihat perenggan 18).

(2) Adalah tidak betul untuk mengatakan hakim tidak menangani elemen niat bersama. Yang Arif hakim telah memerincikan dengan teliti berkenaan dengan peranan yang dimainkan oleh ketiga-tiga perayu dalam melakukan kedua-dua jenayah membunuh dan menculik (lihat perenggan 20).

(3) Ketiga-tiga perayu telah memberikan maklumat yang membawa kepada pelbagai penemuan, di bawah s 27 Akta Keterangan 1950. Perayu pertama memberi maklumat kepada polis membawa kepada penemuan mayat si mati yang terbakar di dalam semak di Kawasan Perindustrian Fasa 3, Taman Puteri Kulai. Perayu kedua memberi maklumat kepada polis membawa kepada penemuan kedai di mana perayu-perayu menjual telefon bimbit kepunyaan si mati. Perayu ketiga memberikan maklumat kepada polis, membawa kepada penemuan beg asal yang mengandungi wang tebusan. Dilihat secara menyeluruh, kesemua keterangan adalah manifestasi jelas tindakan secara berkumpulan oleh perayu-perayu dan oleh itu wajar dianggap untuk telah bertindak dengan niat bersama, bagi kedua-dua kesalahan (lihat perenggan 21–24)

(4) Sebab kematian si mati adalah 'manual strangulation', dan ia tidak dicabar bahawa si mati telah pun mati sebelum mayatnya dibakar. Daripada tindakan itu, ia adalah munasabah untuk disimpulkan bahawa pembakaran mayat adalah tindakan untuk memusnahkan keterangan (lihat perenggan 24).

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(5) Turut tidak dicabar keterangan bahawa si mati kali terakhir dilihat masih hidup apabila sewaktu dia hendak masuk ke dalam kereta, dikenali sebagai Kembara berwarna perak, kenderaan yang mana ketiga-tiga perayu sedang berada di dalamnya semasa mereka ditangkap (lihat perenggan 24).]

Notes

For cases on admissibility of statement, see 7(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2177–2198.
For cases on s 3(1) of the Kidnapping Act 1961, see 4(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 2177–2198.
For cases on s 302 of the Penal Code, see 4(2) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1815–1931.

Cases referred to

Chandmal & Anor v State of Rajasthan AIR 1970 SC 917, SC (refd)
Chua Beow Huat v PP [1970] 2 MLJ 29 (refd)
Chua Kooi Pang & Anor v PP [1998] 3 SLR 593, CA (refd)
PP v Toh Ah Keat [1977] 2 MLJ 87 (refd)
Wong Swee Chin v PP [1981] 1 MLJ 212, FC (refd)

Legislation referred to

Child Act 2001 s 97(2)(b)
Evidence Act 1950 s 27
Kidnapping Act 1961 s 3
Penal Code ss 34, 302

Appeal from: Criminal Trial No 45–17 of 2009 (High Court, Kuala Lumpur)

Norman J Fernandez (C Sukumaran & Co) for the first appellant.
Hisyam Teh Poh Teik (Teh Poh Teik & Co) for the second appellant.
Md Zahar bin Ngah (Zahar & Partners) for the third appellant.
Farah Ezlin bt Yusof Khan (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Apandi Ali JCA (delivering judgment of the court):

INTRODUCTION

[1] These are appeals against convictions and sentences by the three appellants, where all of them were jointly charged for two offences, namely for murder, under s 302 of the Penal Code and for kidnapping, under s 3 of the Kidnapping Act 1961.

[2] The two charges against the appellants read as follows:

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First Charge

Bahawa kamu bersama-sama pada 11-9-2008 di antara jam lebih kurang 12.00 tengah malam di Lot. 2841, Jalan Alor Bukit Kulai, di dalam daerah Kulai Jaya, di dalam Negeri Johor Darul Takzim, di dalam meneruskan niat bersama kamu semua, telah membunuh seorang perempuan iaitu LAI YING XIN (K/P No: 920417-01-6334), oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan yang dibaca bersama seksyen 34 Kanun yang sama.

Second Charge

Bahawa kamu bersama-sama pada 11-09-2008 di antara jam lebih kurang 9.45 malam di hadapan Hypermarket, Jalan Kulai-Air Hitam di dalam daerah Kulai Jaya, di dalam Negeri Johor Darul Takzim, di dalam meneruskan niat bersama kamu semua, telah melakukan colek terhadap LAI YING XIN (K/P No. 920417-01-6334), dengan niat bagi mendapatkan wang tebusan berjumlah RM60,000 oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 3 Akta Colek 1961 (Akta 365) dibaca bersama seksyen 34 Kanun yang sama.

[3] Before we proceed, it is proper to state that as per their respective notices of appeal, the first appellant's appeal is against both conviction and sentence and whereas the second and third appellants' appeals are only against their convictions.

FACTS OF THE CASE

[4] The facts in relation to the charges are overlapping, as they involved events and sequence of events that are linked together. Briefly the facts are as follows:

[5] The whole episode started with the disappearance of a young salesgirl, one Lai Yin Xin not long after she left her workplace on the 11 September 2008. On the 11 September 2008 at about 9.30pm just after work Lai Yin Xin was seen approaching and boarding a silver Perodua Kembara. She was on the date staying with her parents. SP19, Lai Then Song is her father and SP13, Chia Siew Peh is her mother. On the 12 September 2008 at about 6.20am SP13 received a phone call from an unknown person claiming that Lai Yin Xin was in his custody and demanded ransom in the sum of RM60,000 in return of Lai Yin Xin's release. The police was later informed about the demand. Thereafter a series of calls reached SP13 in relation to the demand for money. Finally the caller agreed to accept RM30,500. SP18, Khor Ting Loo the boyfriend of Lai Yin Xin, then delivered the money at the specified location. The money was placed in a bag. On the caller's instructions the bag was later placed beside a road at Taman Indahpura Kulai. According to SP13 Lai Yin Xin owned a Nokia cellphone with line No 016–7087562.

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[6] On the 16 September 2008 at about 1.30am, SP36, Insp Mohd Zairi bin Badderul @ Badrol, based on information, found a body which was totally burnt. Samples were taken from the area where the body was found and sent for forensic analysis. Clinical and forensic examinations by the pathologist, SP20, entomologist ('SP22'), odontologist ('SP25') and chemist ('SP1') confirmed that the body was that of Lai Yin Xin ('the deceased').

[7] All the appellants were arrested on the 15 September 2008 at the parking area at Rose Villa Taman Sri Putri, Johor in a Kembara bearing Registration No JCG 9877 ('the Kembara'). In the Kembara SP27, the chief arresting team found cash totaling RM22,000 placed in a bag (P78) was found lying on the back seat. Another accused, Wong Kah Wai was arrested on the same day at a house No 1929, Jalan Sri Putri 6/7, Taman Putri, Johor Bharu.

[8] After the arrest the prosecution led evidence under s 27 of the Evidence Act 1950 information with regard to the recovery of the deceased's handphone and the bag used to keep the money.

[9] At the end of the prosecution's case the learned trial judge acquitted and discharged Wong Kah Wai, who was the fourth accused at the High Court. After hearing the defence the learned trial judge found all of the appellants guilty on both charges. The first appellant was sentenced to death for both offences, while the second and third appellants, due to their young age at the time of the commission of the offences were ordered to be detained at the *Ruler's Pleasure* under the provision of s 97(2)(b) of the Child Act 2001.

CONTENTIONS BY THE APPELLANTS

[10] The three appellants were respectively represented by three different counsel. At the hearing of the appeals before us, despite the lengthy petitions of appeals and equally lengthy written submissions filed therein, the three learned counsel argued only on two main issues. We shall deal with them according to their respective submissions.

[11] Learned counsel for the first appellant (Teh Kim Hong) argued and contented on one issue only. It was contented that the recovery of the ransom money from the motorcar JGC 9877 was not sufficient circumstantial evidence to link the first appellant with the murder and the kidnapping. On this sole issue, he was relying on para 2 of petition of appeal of the first appellant, which reads as follows:

> Hakim Mahkamah Tinggi juga telah khilaf dari segi fakta dan undang-undang, apabila memutuskan untuk tuduhan membunuh bahawa penemuan wang tebusan, penemuan rambut simati di dalam kereta, penjualan telefon bimbit simati dan keterangan mengenai penemuan beg berisi wang tebusan (P78) di bawah *Akta*

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Keterangan 1950 adalah keterangan mengikut keadaan yang mencukupi untuk mengaitkan Perayu Pertama kepada kematian simati.

[12] Learned counsel for the first appellant also indicated that in support of the above said petition, he was relying and expounded his arguments based on para 4 of his written submission, which reads:

4. PENEMUAN WANG TEBUSAN

Penemuan wang tebusan tidak semestinya menuruskan Perayu Pertama dengan pertuduhan kerana tidak ada sebarang keterangan yang membuktikan bahawa Perayu Pertama (atau mana-mana perayu yang lain) telah membawa masuk wang tebusan ke dalam kereta Kembara JGC 9877. Padahal, semasa perbicaraan saksi pendakwaan anggota polis mengakui bahawa mereka mempunyai maklumat bahawa pencolek telah memaklumkan ahli keluarga simati tempat di mana wang tebusan patut diletakkan. Polis mempunyai peluang yang secukupnya untuk menangkap orang (pencolek) yang datang mengambil wang tebusan.

[13] Learned counsel for the second appellant (Leong Soon Long) canvassed and submitted on two grounds, namely:

(a) failure by the learned trial judge to discuss the element of common intention, s 34 of the Penal Code; and

(b) that the circumstantial evidence was not strong enough.

[14] Learned counsel for the third appellant (Wong Soon Heng) merely adopted the submissions made by learned counsel for the first and second appellants.

[15] From the above contentions, it can be seen that the appellants were canvassing only on two main issues:

(a) circumstantial evidence; and

(b) common intention.

OUR ANALYSIS AND FINDINGS

[16] We must note that in this case, the learned trial judge had written a lengthy grounds of judgment, of which we found it to be a 'speaking' judgment. It is a 'speaking' judgment as it dealt with the burning issues raised by the learned counsel for the appellants.

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[17] On circumstantial evidence, the learned trial judge wrote (from pp 322–331 of the records of appeal):

> [12] Pihak pembelaan berhujah bahawa tidak terdapat keterangan terus (direct evidence) tentang *penglibatan Tertuduh-Tertuduh* dalam kematian simati. Mahkamah bersetuju. Walau bagaimanapun, *terdapat keterangan ikut keadaan (circumstantial evidence)* yang boleh membawa kesimpulan yang tidak boleh disangkal bahawa Tertuduh-Tertuduh telah menyebabkan kematian simati. Keterangan ikut keadaan yang relevan bolehlah diringkas seperti berikut:
>
> (a) wang tebusan telah dijumpai di dalam kereta tersebut yang dinaiki T2 dan T3 dan di dalam dompet yang dikatakan dijumpai di dalam kocek seluar T3;
>
> (b) telefom bimbit (P241) yang dikatakan kepunyaan simati *telah dijual* di sebuah kedai dikenali sebagai PCS Telecommunication Enterprise *oleh T2, T3 dan T4*;
>
> (c) rambut (P95A-B) kepunyaan simati telah dijumpai di dalam kereta tersebut ketika pemeriksaan dilakukan oleh SP26;
>
> (d) *terdapat maklumat yang diberikan oleh T2 dan T3 yang membawa kepada terjumpanya beg yang digunakan mengisi wang tebusan dan telefon bimbit* (Eksibit P241). Maklumat ini boleh diterima masuk di bawah *seksyen 27 Akta Keterangan*;
>
> [13] Keterangan-keterangan ikut keadaan di atas akan dibincangkan secara lebih terperinci di bawah tajuk-tajuk kecil seperti berikut:
>
> (a) Terjumpanya wang tebusan di dalam kereta.
>
> 13.1 Pihak pembelaan membawa hujah bahawa fakta yang *wang tebusan dijumpai di dalam kereta* semata-mata adalah tidak mencukupi untuk menghubungkan Tertuduh-Tertuduh dengan kematian simati kerana pihak pendakwaan tidak menjelaskan siapakah yang memandu kereta tersebut ketika simati dilihat memasukinya dan juga tidak ada penjelasan tentang siapakah yang meletakkan beg tersebut di dalam kereta dan bagaimanakah beg tersebut boleh berada di dalam kereta tersebut.
>
> 13.2 Dengan hormat, mahkamah tidak bersetuju dengan hujah tersebut. Wang tebusan itu bukan dari jenis yang boleh bergerak dengan sendiri ('Migrant species'). Seseorang atau beberapa orang perlu membawa dan meletakkannya di dalam kereta tersebut. *Wang* tebusan terdapat di *dalam sebuah beg (P78) yang terletak di tempat duduk di bahagian belakang* bersebelahan T3. Oleh itu, ia adalah 'in plain view' T3. Jika T3 atau Tertuduh-Tertuduh lain tidak meletakkannya di situ, sudah tentu akan timbul perasaan ingin tahu di pihak mereka tentang beg tersebut dan sesuatu tindakan susulan akan diambil. Hal ini menjadi lebih nyata apabila wang tebusan sebanyak RM800.00 juga dijumpai di dalam dompet seluar yang dipakai oleh T3 sendiri. Berdasarkan rentetan peristiwa dalam kes ini, jelas menunjukkan bahawa *wang tebusan* itu telah dihantar kepada penculik pda 15-9-2008, kira-kira jam 3.00 pagi dan T2 dan T3 ditangkap pada hari yang sama iaitu 15-9-2008, jam 6.15 petang,

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semasa berada di dalam kereta tersebut. Jarak masa antara wang tebusan dihantar dan Tertuduh-Tertuduh ditangkap bersama dengan wang tebusan adalah hampir untuk dibuat kesimpulan bahawa ia adalah suatu kebetulan.

13.3 SP13 dalam keterangannya juga menyatakan bahawa T1 memiliki sebuah kereta Perodua Kembara warna perak (silver), No. Pendaftaran JGC 9877 yang dicamkan melalui gambar-gambar P99 (1, 2, 3 dan 4). Kereta ini dilihat oleh SP13 berlegar-legar di hadapan rumahnya.

13.4 Simati telah hilang pada sebelah malam 11-9-2008 dan telah *dilihat kali terakhir* pada malam itu *oleh SP11* pada kira-kira jam 9.30 malam *dan oleh SP12* pada kira-kira jam 9.40 malam. *SP12 melihat simati menuruni tangga di hadapan Giant Hypermarket dan menaiki sebuah kereta Perodua Kembara warna 'silver'*. Oleh itu, terdapat 'nexus' antara kereta yang dimiliki oleh T1 dan kereta yang dilihat kali terakhir dinaiki oleh simati.

13.5 Justeru, berdasarkan *rentetan peristiwa* di atas, adalah suatu kebetulan yang tidak munasabah untuk disimpulkan bahawa wang tebusan diletakkan di dalam kereta yang dinaiki oleh T2 dan T3 tanpa mereka mempunyai hubungan dan/atau pengetahuan mengenai wang tebusan tersebut.

(b) Telefon bimbit simati dijual oleh T2, T3 dan T4.

13.6 Berdasarkan keterangan, *telefon bimbit simati (P214) telah dijual* oleh T2, T3 dan T4 di kedai PCS Telecommunication Enterprise, Kip Mart, Tampoi. Hasil soal siasat oleh SP36 terhadap T2, pada 17-9-2008, jam kira-kira 2.35 petang, T2 telah membawa SP36 ke kedai tersebut. T2 telah menunjukkan seorang lelaki Melayu (SP33) dan memberitahu D/Koperal Tan Boon Lye sebagai orang di mana telefon (P214) dijual.

13.7 SP33 telah menyerahkan kepada SP36 sebuah telefon bimbit jenama Nokia Model 6288 No. Siri 353226/01/873404/0 warna putih (Eksibit P214). Penemuan tersebut telah dilaporkan oleh SP36 melalui Tampoi Report No. 13431/08 (Eksibit P311) pada hari yang sama pada jam 8.12 malam.

13.8 SP33 mengesahkan bahawa pada 13-9-2008 (2 hari selepas simati diculik), dia telah membeli telefon bimbit Nokia tersebut daripada keempat-empat Tertuduh secara tunai dengan harga RM280.00. Sehelai 'payment voucher' No. HQ 9156 (Eksibit P286) di dalamnya tertera No. Siri 5 digit '34040'. Menurut SP33, No. '34040' tersebut adalah No. *IMEI* telefon bimbit yang terdiri daripada 15 digit, tetapi SP33 hanya menulis 5 angka terakhir sahaja kerana telefon tersebut adalah terpakai. SP33 turut menjelaskan fungsi No. IMEI adalah umpama No. Kad Pengenalan bagi sesuatu telefon bimbit. *Semasa P214 dibeli, ia tidak mengandungi 'SIM Card'*.

13.9 SP33 juga telah menulis nama-nama T2, T3 dan T4 dan No. Kad Pengenalan mereka di dalam sehelai kertas (Eksibit P286A). SP33 turut mengesahkan kehadiran T2, T3 dan T4 melalui tayangan CCTV (Eksibit

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P285 — CD rakaman CCTV) di mana mereka telah datang pada jam 21:08; pada jam 21:22 SP33 telah membuat bayaran RM280.00; pada jam 21:23:44 T2, T3 dan T4 telah mengeluarkan kad pengenalan dan pada jam 21:24:53 SP33 telah mengeluarkan resit. Akhirnya, pada 23-9-2008 SP33 telah menghadiri satu kawad cam dan berjaya mengecam T2, T3 dan T4 (Eksibit P301 Laporan Kawad Cam).

13.10 Keterangan SP17 mengatakan telefon bimbit Nokia (P214) tersebut telah dijual olehnya kepada simati pada tahun 2008 dengan harga RM850.00 tunai. SP17 menjelaskan bahawa semasa dijual, telefon itu berwarna hitam tetapi kini berwarna putih kerana 'casing'nya telah ditukar. SP17 juga positif tentang pengecaman telefon bimbit tersebut kerana ia mengandungi pelekat syarikat 'Nine Speed' (Eksibit P214A) di mana SP17 bekerja. Kali terakhir SP17 melihat telefon tersebut digunakan oleh simati ialah pada tarikh hari jadi SP17 pada 9-9-2008, 3 hari sebelum simati diculik.

13.11 Kesemua keterangan di atas membuktikan bahawa Tertuduh-Tertuduh telah menjual telefon bimbit simati (P214) kepada SP33.

(c) Terjumpanya rambut simati di dalam kereta.

13.12 SP26 (Supt. Azari — PDRM Forensik) telah menemui 2 helai rambut (Eksibit P25A & B) di dalam kereta Perodua Kembara tersebut semasa melakukan pemeriksaan dan mengumpulkan bahan bukti forensik daripada kereta tersebut pada 16-9-2008 di antara jam 12.55 tengahari hingga 3.20 petang di Ibu Pejabat Polis Daerah Kulaijaya. SP1 (Ahli Kimia) pula mengesahkan bahawa *profail DNA* kedua-dua helai rambut tersebut adalah konsisten dengan specimen tulang simati (Eksibit P13 dan P16). SP1 telah mengesahkan tulang-tulang tersebut sebagai tulang simati setelah membandingkannya dengan darah ibubapa simati.

13.13 Keterangan SP26 tentang 2 helai rambut tersebut menunjukkan bahawa simati, T1, T2 dan T3 telah sama-sama berada di dalam kereta Perodua Kembara tersebut pada suatu ketika sebelum mereka ditangkap.

[18] From the above analysis of the evidence by learned trial judge and by cross reference to the evidence of the prosecution witnesses, we of the same view that based on the circumstantial evidence it is clear that the chain of evidence was so complete as to point unerringly to the guilt of the appellants (see *Chandmal & Anor v State of Rajasthan* AIR 1970 SC 917). From the evidence adduced at the trial, it must also be noted that the ransom money recovered from the motorcar and on the person of the third appellant (Wong Soon Heng) were actually *marked notes*. The ransom money were marked, on the instructions of the police, by SP15, the elder sister of the deceased. There was clear evidence that all the money recovered tallied with the serial numbers noted (see exhs P211 A, B, C, D). There is also the unchallenged evidence that the ransom money was delivered at a designated location on 14 September

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2008, by SP18, Khoo Ting Lu, after receiving various instructions and changes as to the final location for the drop of the ransom money. It must also be noted that the successful arrests of the appellants was a result of the efforts of a specially constituted team, known as 'Ops Scorpion'. The team was formed immediately after receiving the police report from the mother of the deceased at 8.19am on 12 September 2008 (see exh P210 at p 663 of the record of appeal).

[19] On common intention, the main complaint by the appellants is that there was insufficient discussion by the learned trial judge on this issue.

[20] With due respect, to learned counsel for the second and third appellants, from the perusal of the grounds of judgment of the learned trial judge, it is not correct to say that the judge did not deal with the element of common intention. As can be seen in para 8 of the judgment (at p 319 of the records of appeal) the learned judge started off by stating that to prove the first charge for murder, the prosecution have to prove common intention. In his elaboration the learned judge had interplayed that element in his analysis of circumstantial evidence. In the course of doing so, the learned judge had detailed in a meticulous manner as to the roles played by the three appellants in the commission of both offences of murder and kidnapping, which in this case, the facts do overlapped.

[21] In particular, it is in evidence that all the three appellants did give information leading to various discoveries, under s 27 of the Evidence Act. The first appellant (Teh Kim Hong) gave information to the police leading to the discovery of the burnt body of the deceased in some bushes at Kawasan Perindustrian Fasa 3, Taman Puteri Kulai. The second appellant (Leong Soon Long) gave information to the police leading to the discovery of the shop where all the appellants sold the handphone belonging to the deceased. The third appellant (Wong Soon Heng) gave information to the police, leading to the discovery of the original bag containing the ransom money at Batu 21, Jalan Air Hitam, Kulai.

[22] Viewed collectively, all of the above evidence are clear manifestation of acts in concert by the appellants and thus can reasonably be deemed to have acted with common intention, for both offences.

CONCLUSION

[23] Beside the above said contentions by learned counsel for the appellants, we have also considered all the other issues as listed in the respective petitions of appeal and in the written submissions. We also perused in detail the evidence available before us in the records of appeal.

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[24] The cause of death of the deceased, as evidenced by SP20, Dr Mohammed Aznool Haidy in his testimony and post-mortem report (exh P216, at p 606 of the records of appeal) was 'manual strangulation', and it was not challenged that the deceased was already dead before her body was burnt. From such act, it can reasonably be inferred that the burning of the body was an act to destroy evidence. It is also unchallenged evidence that the deceased was last seen alive when she was getting into the motorcar, identified as a silver coloured Kembara, the very vehicle in which the three appellants were in when they were apprehended. It is also noted that the person who called SP13 asking for the ransom money spoke in Mandarin and in follow up calls later to SP13's handphone, the said calls came from the handphone number of the deceased.

[25] The issue on the information leading to discovery of fact, under s 27 of the Evidence Act, has been properly dealt with by the trial judge. To that, we may add that the rationale of the admissibility of information under s 27 is because the fact of discovery rebuts the presumption of falsity arising from the probability of it being made as a result of inducement or pressure (see *Public Prosecutor v Toh Ah Keat* [1977] 2 MLJ 87.)

[26] The defence story by the appellants have also been properly dealt with by the learned trial judge. The first appellant brought up the story of the motorcar being borrowed by one Wong Chian. A closer examination of the evidence of the prosecution witnesses, we found that there was not a single cross-examination on any of the witnesses, to suggest the name of Wong Chian. Such failure will result in the defence story to lose its probative value (see *Chua Beow Huat v Public Prosecutor* [1970] 2 MLJ 29; *Wong Swee Chin v Public Prosecutor* [1981] 1 MLJ 212 and *Chua Kooi Pang & Anor v Public Prosecutor* [1998] 3 SLR 593).

[27] Having addressed all the issues and after evaluating them and after evaluating all the evidence at the trial, it is our unanimous conclusion that we find no plausible reason for us to interfere with the findings, conclusion and decision of the learned trial judge. The circumstantial evidence were overwhelming, that it can be concluded that the convictions are safe. As such, the appeals by all the appellants were dismissed and we accordingly affirmed the convictions and sentences imposed by the High Court.

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Appeals dismissed and convictions and sentences affirmed.

Reported by Kanesh Sundrum